



**Cincinnati Bell  
Telephone®**

201 E. Fourth St.  
P.O. Box 2301  
Cincinnati, Ohio 45201-2301

January 16, 1996

RECEIVED

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D. C. 20554

In the Matter of:

DOCKET FILE COPY ORIGINAL

Price Cap Performance Review	)	CC Docket No. 94-1
for Local Exchange Carriers	)	
	)	
Treatment of Operator Services	)	CC Docket No. <u>93-124</u> /
Under Price Cap Regulation	)	
	)	
Revisions to Price Cap Rules for AT&T	)	CC Docket No. 93-197

Dear Mr. Caton:

Enclosed are an original and nine copies of the Reply Comments of Cincinnati Bell Telephone in the above referenced proceeding. Two additional copies are being provided to the Tariff Division and a computer disk copy of the attached Reply Comments is being provided to the Industry Analysis Division, as instructed in paragraph 181 of the Commission's Second Further Notice of Proposed Rulemaking in the above referenced docket. A duplicate original copy of this letter and attached Reply Comments is also provided. Please date stamp this as acknowledgment of its receipt and return it. Questions regarding these Reply Comments may be directed to Ms. Patricia Rupich at the above address or by telephone on (513) 397-6671.

Sincerely,

Peggy A. Peckham  
Director - Legislative &  
Regulatory Planning

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

SEP 26 1995

COMMUNICATIONS  
SECTION

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	)	

**REPLY COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY**

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**I. INTRODUCTION**

Cincinnati Bell Telephone Company ("CBT"), an independent, mid-size local exchange carrier ("LEC"), submits these reply comments in response to comments filed concerning the Commission's September 20, 1995 Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.<sup>1</sup> While CBT does not currently operate under price cap regulation, CBT is participating in this proceeding because the development of a long term price cap regulatory plan will significantly affect the environment in which CBT operates, and will have an impact on whether CBT can elect price cap regulation in the future.

Many of the proposals offered by the Commission to alter the price cap regulation plan should also be available to those service providers which have chosen not to operate under price

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<sup>1</sup> Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1; Treatment for Operator Services Under Price Cap Regulation, CC Docket No. 93-124; Revisions to Price Cap Rules for AT&T, CC Docket No. 93-197, Notice of Proposed Rulemaking, released September 20, 1995.

cap regulation. CBT asserts that companies which do not operate under price cap regulation are also facing competition and must be given the flexibility necessary to respond to these challenges in their markets. Without this flexibility, small and mid-sized carriers will be placed at a disadvantage relative to competitors (which may be price cap carriers) which have the ability to introduce new services and adjust rates to address customers' needs in a timely fashion. It would be inequitable to non-price cap companies and their customers to provide increased flexibility only to price cap companies. CBT is also concerned that many of the regulatory changes suggested by CAPs and IXC's are unrelated to price caps and are aimed only at obtaining a competitive advantage.

## **II. RULES FOR THE INTRODUCTION OF NEW SERVICE OFFERINGS AND RATE CHANGES MUST BE RELAXED**

For a smaller company, the loss of one large customer can be devastating. If a company has the ability to respond to customer needs, but loses a customer because of inefficiencies in its operation, the market is working as it should. However, where a customer is lost because the company was prevented by regulatory constraints from meeting the customer's needs, the company's loss is not driven by economic efficiencies. Indeed, the company may well have been the least cost provider of the service.

One of the most significant issues affecting the ability of both price cap and non-price cap carriers to respond to the needs of customers is the constraints placed on LECs' abilities to introduce new services. As asserted by many commenters in this proceeding, the introduction of new services should always be presumed to be in the public interest.<sup>2</sup> CBT submits that the

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<sup>2</sup> Ameritech Comments, pp. 14-15; Pacific Bell/Nevada Comments, p. 18; USTA Comments, p. 15; Southwestern Bell Comments, p. 16.

Commission should make every effort to remove the regulatory hurdles that LECs must currently negotiate in order to introduce new services. The present system allows LEC competitors to inappropriately game the system by raising baseless objections to new service offerings and rate changes. This only serves to delay the introduction of new services and does not serve the public interest.

**A. Services Should Not Be Categorized According To Competition.**

CBT asserts that no need exists to divide new services into the two separate tracks proposed by the Commission. However, if the Commission does establish two tracks for new services, it is imperative that the distinction between the two tracks be clear and unambiguous.<sup>3</sup> CBT asserts that categorizing services using an essential/non-essential distinction does not meet that requirement.

CBT concurs with Pacific Bell/Nevada Bell that essential services are not those "services which facilitate competitive entry,"<sup>4</sup> as the Commission has suggested, or even those services that inconvenience or cause some economic loss.<sup>5</sup> Such definitions are too subjective to be meaningful and could result in a system in which each and every LEC service must be analyzed in lengthy proceedings because LEC competitors will claim that all LEC services are essential.<sup>6</sup> The delays resulting from such a system would give competitors an unfair advantage and would

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<sup>3</sup> USTA Comments, pp. 21-22; GTE Comments, p. 5; SNET Comments, p. 12; US West Comments, pp. 9-10; Ameritech Comments, p. 10; Southwestern Bell Comments, pp. 29-30; Sprint Comments, p. 14; Ad Hoc Comments, p. 4.

<sup>4</sup> Pacific Bell/Nevada Bell Comments, p. 8.

<sup>5</sup> Pacific Bell/Nevada Bell Comments, p. 8.

<sup>6</sup> See, Ameritech Comments, p. 11; US West Comments, pp. 10-11; SNET Comments, pp. 12-13; GTE Comments, p. 6.

not serve the public interest. CBT reiterates that if the Commission establishes two tracks, Track 1 should only apply to those services that are mandated by the Commission.

**B. CBT Supports The Elimination Of The Need For Part 69 Waivers.**

As stressed by many of the commenters in this proceeding, including CBT, the Part 69 waiver process is unduly burdensome and restricts unnecessarily the introduction of new services.<sup>7</sup> Several commenters, however, recommend that the changes proposed by the Commission in this NPRM concerning the Part 69 waiver process not be implemented until comprehensive reforms are made to the Part 69 rules.<sup>8</sup> CBT disagrees with this recommendation. While CBT believes more comprehensive reform is needed, customers should not be denied the benefit of new services offered at competitive prices by LECs while other modifications of the Part 69 rules are contemplated. It appears that those who are opposing the changes in the Part 69 rules proposed by the Commission are seeking to maintain the competitive advantage which the current waiver process affords them, in that challenges by competitors on issues unrelated to the determination of the public interest add significant delays to the current waiver process.

Part 69 waivers have been a major concern for LECs because of the length of time required to resolve waiver applications. For LEC customers, this waiver process appears to only serve the purpose of delaying the introduction of a new service they wish to purchase. CBT

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<sup>7</sup> USTA Comments, pp. 16-17; Bell Atlantic Comments, p. 9; US West Comments, pp. 21-22; Sprint Comments, p. 20; Time Warner Comments, p. 18.

<sup>8</sup> National Cable Television Association Comments, p. 27; LDDS Comments, p. 32.

supports the elimination of the need for all Part 69 waivers, regardless of the form of regulation under which an individual carrier operates.<sup>9</sup>

**C. CBT Supports Permitting LECs To Offer Contract Pricing For Access Services.**

All providers of similar services must be allowed to price their services under the same rules and conditions so that competitive advantages do not unfairly accrue to providers who are given greater flexibility. CBT is concerned that under the Commission's proposal, contract pricing would be allowed only under streamlined regulation. CBT agrees with the comments offered by US West and the USTA that contract pricing should be allowed under baseline regulation.<sup>10</sup> Clearly, where a business customer receives at least two responses to an RFP for communication services, competition is present for those services in that geographic market. This is the case regardless of the form of regulation under which the carrier operates. Therefore, all LECs should be permitted to offer contract pricing, regardless of the form of regulation under which they operate.

**III. MARKET SHARE DOES NOT REFLECT MARKET POWER**

CBT notes the widely divergent views regarding the importance of market share in determining market power. CBT believes that a careful review of the comments offered on this issue clearly supports the position that market share is not an accurate indicator of market power.<sup>11</sup> This is particularly true in industries where market share has been created by

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<sup>9</sup> CBT reiterates that the Commission should realize that these waivers affect all LECs and their customers equally.

<sup>10</sup> US West Comments, p. 44; USTA Comments, pp. 26-29.

<sup>11</sup> See generally, Pacific Bell/Nevada Bell Comments, pp. 42-43; Ameritech Comments, pp. 34-35.

regulators. As Southwestern Bell notes in its comments, this reality has also been recognized by courts.<sup>12</sup> For example, in Metro Mobile CTS, Inc. v. New Vector Communications, Inc., 892 F.2d 62, 63 (9th Cir. 1989), the Court stated, "Reliance on statistical market share in cases involving regulated industries is, at best, a tricky enterprise and is downright folly where, as here, the predominant market share is the result of regulation." Furthermore, to measure market power on the basis of the percent of access lines lost, as suggested by Time Warner and AT&T<sup>13</sup>, is totally inappropriate. As Pacific Bell/Nevada Bell and Ameritech observe, the loss of one customer, in the access market in particular, can have a devastating impact on a carrier.<sup>14</sup> As the comments of Pacific Bell/Nevada Bell show, the loss of a small number of customers can result in a sizable reduction in revenue even for a large company.<sup>15</sup> This impact could be magnified for a smaller carrier such as CBT. CBT reasserts that incumbent market share levels do not necessarily indicate the levels of market power held by the LEC.

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<sup>12</sup> Southwestern Bell Comments, p. 66.

<sup>13</sup> Time Warner Comments, p. 27; AT&T Comments, p. 17.

<sup>14</sup> Pacific Bell/Nevada Bell Comments, pp. 42-43; Ameritech Comments, pp. 34-35.

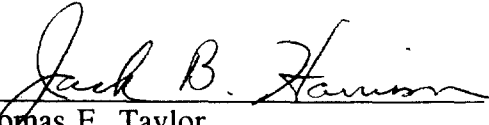
<sup>15</sup> Pacific Bell/Nevada Bell Comments, pp. 42-43.

#### IV. CONCLUSION

CBT asserts that the Commission should minimize regulatory oversight for all LECs wherever possible and develop rules that promote efficient and effective competition.

Respectfully submitted,

FROST & JACOBS

By   
Thomas E. Taylor  
Jack B. Harrison

2500 PNC Center  
201 East Fifth Street  
Cincinnati, Ohio 45202  
(513) 651-6800

Attorneys for Cincinnati Bell  
Telephone Company

Dated: January 16, 1996

0269604.04

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that copies of the foregoing **Reply Comments of Cincinnati Bell Telephone Company** have been delivered by first class United States Mail, postage prepaid, on January 16, 1996, to the persons on the attached service list.

  
\_\_\_\_\_  
Amy K. Collins

William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

Gregory Vogt  
Tariff Division, Room 518 (two copies)  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Industry Analysis Division (disk copy)  
Common Carrier Bureau  
1919 M Street, N.W., Room 534  
Washington, DC 20553

International Transcription Svc., Inc.  
2100 M Street, N.W.  
Washington, DC 20554

Janice Myles  
Policy and Program Planning Division  
Common Carrier Bureau  
1919 M Street, N.W., Room 544  
Washington, DC 20554

Dr. Lee L. Selwyn  
Dr. David J. Roddy  
Ad Hoc Telecommunications Users Committee  
Economics and Technology, Inc.  
One Washington Mall  
Boston, Massachusetts 02108-2617

James S. Blaszak  
Levine, Blaszak, Block & Boothby  
Ad Hoc Telecommunications Users Committee  
1300 Connecticut Avenue, N.W., Suite 500  
Washington, DC 20036-1703

Dr. Lee L. Selwyn  
Dr. David J. Roddy  
James S. Blaszak  
Levine, Blaszak, Block & Boothby  
Ad Hoc Telecommunications Users Group  
1300 Connecticut Avenue, N.W., Suite 500  
Washington, DC 20036-1703

Susan M. Gately  
Economics and Technology, Inc.  
Ad Hoc Telecommunications Users Group  
One Washington Mall  
Boston, MA 02108-2617

John C. Smith  
Aeronautical Radio, Inc.  
2551 Riva Road  
Annapolis, MD 21401

James E. Keith  
Ambox Incorporated  
6040 Telephone Road  
Houston, Texas 77087

Carol C. Henderson  
American Library Association  
110 Maryland Avenue, N.E.  
Washington, DC 20002-5675

Michael S. Pabian  
Gary R. Phillips  
Ameritech  
2000 West Ameritech Center Drive, Room 4H82  
Hoffman Estates, Illinois 60196

Lawrence R. Sidman  
Eric T. Werner  
Verner Lipfert Bernhard  
McPherson & Hand Chartered  
Ameritech  
901 15th Street, N.W., Suite 700  
Washington, DC 20005-2301

Charles W. Trippe  
Ampro Corporation  
525 John Rodes Blvd.  
Melbourne, FL 32934

Richard J. Metzger  
Association for Local Telecommunications Services  
1200 19th Street, N.W., Suite 560  
Washington, DC 20036

Marc E. Manly  
AT&T Corporation  
1722 Eye Street, N.W.  
Washington, DC 20006

Debra Buruchian  
ATX Telecommunications Services  
101 South 39th Street  
Philadelphia, PA 19104

Michael E. Glover  
Edward D. Shakin  
Bell Atlantic Telephone Companies  
1320 N. Court House Road, 8th Floor  
Arlington, VA 22201

M. Robert Sutherland  
Richard M. Sbaratta  
Bellsouth Telecommunications, Inc.  
4300 Southern Bell Center  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375

Alan J. Gardner  
Jerry Yanowitz  
Jeffrey Sinsheimer  
California Cable Television Association  
4341 Piedmont Avenue  
Oakland, California 94611

W. Theodore Pierson, Jr.  
Richard J. Metzger  
Douglas J. Minster  
Pierson & Tuttle  
Association for Local Telecommunications Services  
1200 19th Street, N.W., Suite 607  
Washington, DC 20036

Mark C. Rosenblum  
Peter H. Jacoby  
Richard H. Rubin  
AT&T Corporation  
295 North Maple Avenue, Room 3244J1  
Basking Ridge, New Jersey 07920

Janet Reno  
Attorney General Of United States Of America  
Department of Justice  
10th Street & Constitution Avenue, N.W., Room 4400  
Washington, DC 20530

Paul Pandian  
Axes Technologies, Inc.  
3333 Earhart  
Carrollton, TX 32230

Gary M. Epstein  
James H. Barker  
Latham & Watkins  
Bellsouth Telecommunications, Inc.  
1001 Pennsylvania Avenue, N.W., Suite 1300  
Washington, DC 20004-2505

Walter Bolter  
Bethesda Research Institute, Ltd.  
P.O. Box 4044  
St. Augustine, Florida 32085

Donna N. Lampert  
Christopher J. Harvie  
Russel C. Merbeth  
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.  
California Cable Television Association  
701 Pennsylvania Avenue, N.W., Suite 900  
Washington, DC 20004

Dr. Jerome R. Ellig  
Center for Market Processes  
4084 University Drive, Suite 208  
Fairfax, VA 22030

George Sollman  
Centigram Communications Corporation  
91 East Tasman Drive  
San Jose, CA 95134

James Gattuso  
Beverly McKittrick  
Citizens for A Sound Economy Foundation  
1250 H Street, N.W.  
Washington, DC 20005

Leonard J. Kennedy  
Laura H. Phillips  
Peter A. Batacan  
Dow, Lohnes & Albertson  
Comcast Corporation  
1255 23rd St., N.W., Suite 500  
Washington, DC 20037

Genevieve Morelli  
Competitive Telecommunications Association  
1140 Connecticut Avenue, N.W., Suite 220  
Washington, DC 20036

Danny E. Adams  
Jeffrey S. Linder  
Wiley Rein & Fielding  
Competitive Telecommunications Association  
1776 K Street, N.W.  
Washington, DC 20006

Allan J. Arlow  
Computer & Communications  
Industry Associations  
666 11th Street, N.W.  
Washington, DC 20001

Charles A. Zielinski  
Rogers & Wells  
Computer & Communications Industry Association  
607 14th Street, N.W.  
Washington, DC 20005

Henry M. Rivera  
Ginsburg, Feldman and Bress Chartered  
Counsel of Chief State School Officers &  
National Assoc. of Secondary School Principals  
1250 Connecticut Avenue, N.W.  
Washington, DC 20036

Werner K. Hartenberger  
Laura H. Phillips  
Christina H. Burrow  
Cox Enterprises, Inc.  
Dow, Lohnes & Albertson  
1255 Twenty-Third Street, N.W., Suite 500  
Washington, D.C. 20037

Emily C. Hewitt  
Vincent L. Crivella  
Michael J. Ettner  
Robert C. Mackichan, Jr.  
General Services Administration  
18th & F Sts., Room 4002  
Washington, DC 20405

Richard McKenna  
GTE Service Corporation  
P. O. Box 152092  
Irving, TX 75015-2092

Gail L. Polivy  
GTE Service Corporation  
1850 M Street, N.W., Suite 1200  
Washington, DC 20036

Stephen B. Kaufman  
Healthtech Services Corporation  
255 Revere Drive, Suite 101  
Northbrook, IL 60062

Michael L. Glaser  
K. Harsha Krishnan  
Hopper and Kanouff, P.C.  
ICG Access Services, Inc.  
1610 Wynkoop St., Suite 200  
Denver, Colorado 80202

Robert J. Butler  
Kurt E. Desoto  
Wiley, Rein & Fielding  
Information Industry Association  
1776 K Street, N.W.  
Washington, D.C. 20006

R. Michael Senkowski  
Jeffrey S. Linder  
Wiley Rein & Fielding  
Information Technology and  
Telecommunications Association  
1776 K Street, N.W.  
Washington, DC 20006

James B. Wood  
Inovonics, Inc.  
1304 Sair Avenue  
Santa Cruz, CA 95060

Lucile M. Moore  
Intellect, Inc.  
1100 Executive Drive  
Richardson, TX 75081

Jonathan E. Canis  
Swidler & Berlin Chartered  
Intermedia Communications of Florida, Inc.  
3000 K Street, N.W., Suite 300  
Washington, DC 20007

Brian R. Moir  
Moir & Hardman  
International Communications Associations  
2000 L Street, N.W., Suite 512  
Washington, DC 20036

Philip F. McClelland  
Irwin A. Popowsky Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Joseph A. LaHoud  
LC Technologies, Inc.  
9455 Silver King Court  
Fairfax, VA 22031

Robert J. Aamoth  
Reed Smith Shaw & McClay  
LCI International, Inc.  
1301 K Street, N.W., Suite 1100, East Tower  
Washington, D.C. 20005

Douglas W. Kinkoph  
LCI International, Inc.  
8180 Greensboro Drive, Suite 800  
McLean, VA 22102

Catherine Sloan  
Richard Fruchterman  
Richard Whitt  
LDDS WorldCom  
1120 Connecticut Avenue, N.W., Suite 400  
Washington, D.C. 20036

Robert A. Mazer  
Nixon Hargrave Devans & Doyle  
Lincoln Telephone And Telegraph Company  
One Thomas Circle, N.W., Suite 800  
Washington, DC 20005

John E. Lingo, Jr  
Lingo, Inc.  
P.O. Box 1237  
Camden, NJ 08105

Chris Frentrup  
Elizabeth Dickerson  
MCI Telecommunications Corporation  
1801 Pennsylvania Avenue, N.W.  
Washington, DC 20006

Andrew D. Lipman  
Jonathan E. Canis  
Cindy Z. Schonhaut  
Swidler & Berlin Chartered  
MFS Communications Company, Inc.  
3000 K Street, N.W.  
Washington, DC 20007

Daniel Kelley  
Hatfield Associates, Inc.  
National Cable Television Association, Inc.  
737 29th Street, Suite 200  
Boulder, CO 80303

David Cosson  
National Telephone Cooperative Association  
2626 Pennsylvania Avenue, N.W.  
Washington, DC 20037

Margot, Smiley, and Humphrey  
Koteen & Naftalin  
National Rural Telecommunication Association  
1150 Connecticut Avenue N.W., Suite 1000  
Washington, DC 20036

Daniel L. Brenner  
Neal M. Goldberg  
David L. Nicoll  
National Cable Television Association, Inc.  
1724 Massachusetts Avenue, N.W.  
Washington, DC 20036

Philip L. Verveer  
Thomas Jones  
Willkie Farr & Gallagher  
National Cable Television Association, Inc.  
1155 21st Street, N.W.  
Washington, DC 20036

Joseph DiBella  
NYNEX Telephone Companies  
1300 I Street, N.W., Suite 400 West  
Washington, DC 20005

Edward R. Wholl  
Campbell L. Ayling  
Edward E. Niehoff  
NYNEX Telephone Companies  
120 Bloomingdale Road  
White Plains, NY 10604

David C. Bergmann  
Yvonne T. Ranft  
Office of the Consumers' Counsel State of Ohio  
77 South High Street, 15th Floor  
Columbus, Ohio 43266-0550

L. Paul Knoerzer  
OK Champion Corporation  
P.O. Box 585  
Hammond, IN 46320

Lisa M. Zaina  
Organization For the Protection and Advancement  
of Small Telephone Companies  
21 Dupont Circle, N.W., Suite 700  
Washington, DC 20036

James L. Wurtz  
Margaret E. Garber  
Pacific Bell and Nevada Bell  
1275 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Lucille M. Mates  
Sarah Rubenstein  
Pacific Bell and Nevada Bell  
140 New Montgomery Street, Room 1522A  
San Francisco, CA 94105

James P. Tuthill  
John W. Bogy  
Lucille M. Mates  
Pacific Bell and Nevada Bell  
140 New Montgomery Street, Room 1530-A  
San Francisco, CA 94105

Frank Tripi  
Perception Technology Corp.  
40 Shawnut Road  
Canton, MA 02021

J. R. Panholzer  
Remarque MFG Corporation  
110 Field Street  
W. Babylon, NY 11704

Al W. Wokas  
Rhetorex, Inc.  
200 E. Hacienda Avenue  
Campbell, CA 95008

Michael J. Shortley, III  
Rochester Telephone Corporation  
180 South Clinton Avenue  
Rochester, New York 14646

David L. Deming  
Senecom Voice Processing Systems  
6 Blossomwood Court  
St. Louis, MO 63033-5202

Eugene J. Baldrate  
Ann U. MacClintock  
Southern New England Telephone Company  
227 Church Street  
New Haven, CT 06510

Robert M. Lynch  
Durward D. Dupre  
Thomas A. Pajda  
Southwestern Bell Telephone Company  
One Bell Center, Suite 3520  
St. Louis, Missouri 63101

Durward D. Dupre  
Richard C. Hartgrove  
Southwestern Bell Telephone Company  
1010 Pine Street, Room 2114  
St. Louis, MO 63101

Jay C. Keithley  
Leon M. Kestenbaum  
H. Richard Juhnke  
Norina T. Moy  
Sprint Corporation  
1850 M Street, N.W., Suite 1110  
Washington, DC 20036

Jonathan M. Chambers  
Sprint Telecommunications Venture  
1850 M Street, N.W., Suite 1100  
Washington, D.C. 20036

Cheryl A. Tritt  
Charles H. Kennedy  
Eric N. Richardson  
Morrison & Foerster  
Sprint Telecommunications Venture  
2000 Pennsylvania Avenue, N.W., Suite 5500  
Washington, D.C. 20006-1888

W. Richard Morris  
Sprint Corporation  
P.O. Box 11315  
Kansas City, MO 64112

Barry Gorsun  
Summa Four, Inc.  
25 Sun Dial Avenue  
Manchester, NH 03103

William H. Combs, III  
Tamaqua Cable Products Corporation  
P.O. Box 347  
300 Willow Street  
Schuylkill Haven, PA 17972

Charles C. Hunter  
Kevin S. Dilallo  
Hunter & Mow, P.C.  
Telecommunications Resellers Association  
1620 I Street, N.W., Suite 701  
Washington, D.C. 20006

J. Manning Lee  
Gail Garfield Schwartz  
Teleport Communications Group, Inc.  
Two Teleport Drive, Suite 300  
Staten Island, NY 10311

Fred Van Veen  
Teradyne, Inc.  
321 Harrison Avenue  
Boston, MA 02118

David R. Poe  
Cherie R. Kiser  
Leboeuf, Lamb, Greene & Macrea  
Time Warner Communications Holdings, Inc.  
1875 Connecticut Avenue, N.W.  
Washington, DC 20009-5728

Susan M. Baldwin  
Patricia D. Kravtin  
Economic Consultants  
Time Warner Communications  
One Washington Mall  
Boston, Massachusetts 02108

Paul B. Jones  
Janis A. Stahlhut  
Time Warner Communications  
300 First Stamford Place  
Stamford, Connecticut 06902-6732

David R. Poe  
Brian T. Fitzgerald  
Leboeuf, Lamb, Greene & MacRae  
Time Warner Communications Holdings, Inc.  
1875 Connecticut Avenue, N.W.  
Washington, D.C. 20009-5728

Dr. Lee L. Selwyn  
Susan M. Baldwin  
Economics and Technology, Inc.  
Time Warner Communications Holdings, Inc.  
One Washington Mall  
Boston, Massachusetts 02108

Paul B. Jones  
Janis Stahlhut  
Donald F. Shephard  
Time Warner Communications Holdings, Inc.  
300 First Stamford Place  
Stamford, Connecticut 06902-6730

Susan M. Baldwin  
Patricia D. Kravtin  
Economic Consultants  
Time Warner Communications  
One Washington Mall  
Boston, Massachusetts 02108

James T. Hannon  
Dan Poole  
Gregory L. Cannon  
U S West Communications, Inc.  
1020 19th Street, N.W., Suite 700  
Washington, DC 20036

Gregory L. Cannon  
U S West Communications, Inc.  
1020 19th Street, N.W., Suite 700  
Washington, DC 20036

Linda Kent  
Mary McDermott  
Charles D. Cosson  
USTA  
1401 H Street, N.W., Suite 600  
Washington, D.C. 20005-2136

Lawrence P. Keller  
Cathey Hutton & Associates, Inc.  
USTA  
3300 Holcomb Bridge Road, Suite 286  
Norcross, GA 30092

Peter A. Rohrbach  
Linda L. Oliver  
Hogan & Hartson  
Wiltel, Inc.  
Columbia Square  
555 13th Street, N.W.  
Washington, DC 20004-1109

Peter A. Rohrbach  
Karis A. Hastings  
Hogan & Hartson  
Worldcom, Inc.  
555 13th Street, N.W.  
Washington, DC 20004